

STATE OF IOWA

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

BEFORE THE IMPARTIAL INTEREST ARBITRATOR, JOHN L. AYERS

In the Matter of:

ASSOCIATION OF PROFESSIONAL
FIREFIGHTERS, #395,

Certified Employee Organization,
(Association)

and

CITY OF OTTUMWA, IOWA,

Public Employer,
(City)

IOWA PERB NO. CEO #483/3

Pursuant to agreement of the parties, hearing was held in this matter on March 8, 2004, commencing at 9:30 a.m. and closing at 7:00 p.m. in Room 105 of the Bender Building of the Indian Hills Community College in Ottumwa, Iowa. The Association was represented by Jack Reed, Captain in the Ottumwa Fire Department, and the City by Steve Rasmussen, City Administrator. Both parties were afforded full opportunity to present testimony and evidence, which includes dozens of exhibits, to cross-examine and to make argument. The Arbitrator swore in all witnesses, tape-recorded the hearing and made extensive notes of the hearing.

Based upon the entire record considered as a whole, whether referred to specifically below or not, I issue the following Findings of Fact, Conclusions and Award.

PRELIMINARY MATTER

Upon going on the record, the Association stated its intention to file a petition for a negotiability determination with the Public Employment Relations Board. The Union states that the basis for the claim is that the City failed to present to the Association, prior to exchange of final offers here, the City's final offers on "Kelly Days" and Wages. I informed the parties that we would proceed with the hearing and that they would then await the Public Employment Relations Board's determination of the negotiability matter.

FINDINGS OF FACT

Having failed to reach agreement in bargaining, and Fact Finding, for a one-year collective bargaining agreement for the period July 1, 2004 to June 30, 2005, these parties proceeded to this Arbitration.

The parties exchanged final offers on March 5, 2004. These final offers included a Health Insurance item. This item was subsequently agreed to and is not submitted here for decision.

These remaining final offers and the recommendations of the Fact Finder are as follows on each Impasse Item:

	<u>Association</u>	<u>City</u>	<u>Fact Finder</u>
Wages	2% "End loaded" pay increase plus EMS pay	1% January 1, 2005 pay increase plus EMS pay and step and longevity pay	2% "across the board" pay increase plus EMS pay
Holiday Leave	as is	"Kelly Days" add one additional day off with all of these days at City's discretion, per month	as is

Sick Leave Payout	Escrow Plan at 50% payout (maximum of 48 & 80 hours)	as is	as is
Vacation Severance	Pay for an 8-hour- day	as is	as is

Ottumwa is in southeast Iowa and has a population of 24,695. The Association and the City have had a collective bargaining relationship since 1976. The Association represents the Fire Department bargaining unit which includes all of that department's employees except the Chief. These ranks include 3 Assistant Chiefs, 6 Captains, 21 Fire Fighters, a Training Officer and an Inspector.

Comparable Cities' Fire Departments

The Association uses, throughout, a group of eight Iowa cities which have "career" fire departments and are between 20,000 and 30,000 in population for comparability-group purposes. The City has used a variety of groups of cities for various impasse-item comparisons, because, in the commendably candid words of its representative here, ". . . you use what cities you can in order to use what can work for you."

Among the Association's comparability-group the wage increases are in the 3%-4% range for the next one-year contract period. The City has presented no exhibit showing a comparability group wage increase for this period.

Wages Impasse Item

The Association's "end loaded" wage increase final offer follows:

Exhibit A—Base Pay

	A	B	C	D
ROOKIE	10.25			
				(Cost in Dollars)
FIRE FIGHTER 1 YEAR	10.71			
1 ST CLASS (AFTER 3 YEARS)		12.25	12.39	(6,290) 12.95
MASTER FIRE FIGHTERS		13.15	(757) 13.40	(4,425) 14.00
FIRE CAPTAIN		14.24	(990) 14.50	(6,872) 15.30
ASSISTANT CHIEF		15.50	(1,281) 15.75	(1,980) 16.60
All Line / Crew Fire Fighters above hourly rate shall be based on 2912 hours per year.				
TRAINING OFFICER & INSPECTOR		19.89	20.19	(2,538) 21.10

Training Officers and Fire Inspector hourly rates shall be based on 2080 hours per year.

- A. Increases and payroll adjustments are effective at the beginning of the pay period closest to the actual due date of the adjustment.
- B. Fire Fighters upon completion of 12 months in steps Rookie A, B, C will move to the next step in their classification.
- C. Rookie Fire Fighters upon completion of 12 months in rookie classification will move to Fire Fighter 1 classification.
- D. Fire Fighters upon completion of 24 months in Fire Fighter 1 will move to 1st Class Fire Fighters.
- E. Date of rank is the date of promotion or adjustment for each Fire Fighter.

Total Cost Increase: \$ 25,134 equals 2.0 % of Base Payroll

Review of this final offer shows the meaning of the term "end load." The Association seeks increases for the employees with the most seniority in the top ranks and no increase elsewhere on the pay schedule. The principal argument adduced in support of this final offer is to more quickly raise salaries for those nearing retirement. This is meant to provide a better platform from which Iowa's retirement system for fire fighters is figured. This retirement sum depends on the salary at retirement age. Therefore, a higher salary at retirement means a higher retirement benefit. The Association also asserts that

this better retirement pay is an incentive to join the fire department in the first place. In support of this latter argument the Association presented several exhibits which, in toto, show a large increase in the number of qualified applicants for employment in the fire department in 2001. This was the result, so the argument goes, of the department's having created a pay schedule with a step system, end-loading and a frozen entry-level step just prior to this increase in the applicant pool.

The EMS pay proposal is identical at \$900 per year in both the Association and City final offers. This is a new wage payment. All fire department employees have been, and are, eligible to get the training necessary to be EMS certified, at the City's expense, pursuant to State of Iowa regulations. Of the 32 members of the bargaining unit, 24 have chosen to take the training and become certified. This training took place on about two-thirds of the employees' own time and about one-third on City time.

The City's across-the-board on January 1, 2005, increase of 1% equals a $\frac{1}{2}\%$ increase for the term of this agreement. The City has included in its final offer on wages the "step" and longevity increases as they appear in the current agreement. The City states that it is because of financial constraints imposed by State of Iowa mandates upon it (and other Iowa cities) that it cannot afford to pay a larger increase in wages.

Since 1997, to date, there has been a 12.6% decline in the City's General Fund Revenue, while the pay increases for fire

fighters over this same period add up to a 26% rise in wages. This, so the argument goes, demonstrates both the City's intent to do well by its employees and its current revenue problems.

Holiday Leave Impasse Item

The Association proposes to keep the Holiday Leave as is.

The City wishes to replace the present Holiday Leave provision with a new "Kelly Day" article. Presently there are the usual holidays provided for, spread out on the calendar, each of which, 10 presently, all employees are entitled to. The City's final offer here provides an increase to 11 days-off with pay. There is no specific language on this record as it would appear in the collective bargaining agreement. As testified to at hearing these 11 days would be spread out over the year with no more than one-day-a-month, all requests for leave to be approved by the Department. This would help the City with a problem it has with insufficient staffing of its two fire stations with their three 24-hour shifts. City budget issues have precluded hiring a projected three additional fire fighters.

The Association's view is that short-staffing is a problem of the City's own making and in its control entirely and that the present provision for leave on normal holidays for fire fighters, as is available to workers virtually everywhere, has been bargained for and is very much enjoyed by fire fighters and their families.

Sick Leave Payout Impasse Item

The Association's final offer provides for an increase from 25% in the current agreement to 50% of the accrued (unused) sick leave eligible for payout. This final offer also provides that this payout for "56-hour employees" would have a maximum payout of 80 hours rather than the present 68 hours. The last part of this final offer is to have this amount paid out at retirement in the form of monthly health insurance premiums rather than annually, as is presently provided for.

The City thinks the current system works well; the proposal costs more when money is needed for wages and other items; and that sick leave is not to be an income generator.

Vacation Severance Pay Impasse Item

The Association wishes to add "8 hours" to the contract as the measure of a day for which an employee would receive a severance benefit. The City has derived an "11.2" factor to determine this payment. This decision of the City has been the subject of three grievance arbitrations which have split 1-for the Association and 2- for the City.

The contract formula which provides for a payout of vacation (daily) pay upon severance of employment is "annual pay (base pay plus longevity) = daily pay. This equation establishes the daily rate and the dispute here is as to the length of the day or "how many hours in the day," hence the Association's "8-hour" proposal for this measure.

There is extensive testimony and evidence in the record as to how the system works with both the "11.2" and the "8-hour" factors.

This formula, long-years in the contract, however, fixes the divisor at "260" and when the annual hours worked by fire fighters—2912—is divided by this, the dividend is "11.2," the factor used by the City and upheld in the most recent two of the three grievance arbitrations.

The Association acknowledges this as a contentious issue in the bargaining unit which also includes 40-hours-a-week employees.

Costs

The City and the Union agree that the cost of the EMS wage increase at \$900 per person is \$20,100. The cost this year, FY 2004 (July 1, 2003 to June 30, 2004), to the City for wages is \$638,167 (See City Ex. "Tab 2, p. 7": 1% increase = \$6,381.67). This tells us that this EMS pay is an approximate 3.1% wage increase.

The Association costs its wage proposal at \$25,134 or "2% of Base Payroll" (See Association Ex. #5).

CONCLUSIONS

Chapter 20.22(9) The Code, 2003, provides, in relevant part:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Here, of the mandated factors, comparability (subsection b) applies. With regard to subsections c and d, the application of these factors will become evident as the wage issue is resolved. It is true that the City has demonstrated financial difficulties, but it has not claimed an inability to pay (subsection c). Limitations on revenue increases as mentioned above apply. The Code also provides that the Interest Arbitrator must select from among the three options, as here; namely, either the final offer of the Union, of the Employer, or the Fact Finder's recommendation on each Impasse Item. The Arbitrator, thus, may not award compromise, or "in the middle" results. [Chapter 20.22(3)]

Wages

The new EMS payment of \$900 per person who wishes to take it, is the largest pay increase reported on this second, and, quite unusually, the parties are in agreement on this. There is no record developed here as to why this is the case when the other proposed wage increase items are smaller and vigorously debated. The record does say that there was a "grant" for the EMS training and it may possibly be inferred that the wage

increase itself depends on some separate revenue source. This is, however, only an inference and has no bearing on my decision.

Nevertheless, it is not the business of a neutral to ignore a wage increase in the resolution of an impasse. If it looks like a duck, etc.! The EMS \$900 per person is a wage increase and is considered here as such!

Secondly, the Association's rationale for an "end-loaded" pay schedule fails on one of its own grounds. Its exhibit showing the large increase in qualified applicants three years ago can just as reasonably be understood to mean that the present pay schedule is sufficient to attract an (more than) adequate labor pool from which to select new hires. Additionally, as the City pointed out at hearing, most of those favored by the "end load" here have so far elected not to seek the \$900 EMS pay raise which is available to them at their election. With a record insufficient to support an "end load" of its 2% final offer, I need not further discuss the "2%" since the "end load" and the 2% are packaged by the Association in its final offer.

The Fact Finder's recommendation for a 2% across-the-board increase and EMS pay was issued before the City agreed with the Fact Finder's recommended resolution of the Health Insurance Impasse Item. This resolution has raised the City's contribution for Health Insurance from 80% to 90% with a three-tier drug card system, thus substantially raising the City's cost of providing this benefit and, at the same time,

obviously, raising the benefit to each employee. In my view the Fact Finder's recommendation has thus been one taken in time by the parties in their successful resolution of the Health Insurance Item. Additionally, a 2% across-the-board wage increase on top of the 3.1% EMS wage increase would be well-above the 3%-4% range in the most useful comparability group on this record.

The City's final offer at ½% across-the-board plus the \$900 EMS pay available (but not chosen, I understand) to all, places the City's offer in the settlement range of the Association's comparability group. Thus, even with the City's revenue and budget issues fully displayed on the record, it is the City's final offer which is the most reasonable on the Wages impasse item.

Holiday Leave

The City's final offer on this record does not contain proposed contract language for its administration. Without this information it is not possible to evaluate the proposal adequately. The concept itself is a dramatic change in the nature of "Holiday Leave." Even with proposed language, substantial analysis would be in order. This matter is best left to be further developed, if the City chooses, in bargaining between the parties. It is more reasonable to leave this Impasse Item "as is" as the Union proposes and as the Fact Finder recommended.

Sick Leave Impasse Item

The final offer of the City on this Impasse Item is to leave the matter "as is." I adopt as my own the Recommendation of the Fact Finder, including her analysis, as follows:

The Association proposes that Article 6 Section 7 be modified to read:

As of July 1st of each year the City shall escrow an amount equal to the following formula for each Fire Department member, and provide summarized report [sic]. The City shall hold the funds for each individual until such time that the employee retires. At the time of retirement the City shall use the funds to pay the employee's portion or their spouse's portion of the monthly health insurance premium. The formula for computing the annual amount to be escrowed shall be figured for 40 hour employees by taking 50% of the total accrued sick leave hours in excess of 1920, up to a maximum of 48 hours; and for 56 hour employees by taking 50% of all accrued sick leave in excess of 2688 up to a maximum of 80 hours.

The City proposes that Article 6 Section 7 remain unchanged.

Under the current agreement, there is no escrow, except that

Employees who have more than ten (10) years seniority in the Ottumwa Fire Department may choose to remain under the sick leave policy in effect prior to July 1, 1991, which provides that employees are paid one-half of accumulated sick leave up to a maximum of \$5,000.00 upon retirement. (Article 6, Section 7, second paragraph)

Employees currently receive a sick leave payout on the payday closest to December 1 of each year. That payout is limited to 25% of the accrued sick leave in excess of 1920 hours, up to a maximum of 48 hours for 40-hour-week employees, and 25% of the leave in excess of 2688 hours, up to a maximum of 68 hours, for 56-hour-week employees. Thus the Association proposal postpones the payout until retirement, doubles the payout proportion amount that would accrue each year, and increases the maximum number of hours that 56-hour-week employees can "recapture." The Association acknowledges that this is a substantial change, but complains that the March 15 statutory deadline limited the parties' opportunity to explore other alternatives.

The City responds that this proposal would increase its costs by approximately \$20,000, without any compelling reason to do so. Based on the payouts in 2003, only 16 members of the bargaining unit would benefit from this change, and none of the other comparable communities identified by the Association has an annual payout.

Based on this record, I cannot recommend a change to Article 6 Section 7. Sick leave is not intended to boost income; it is intended to provide a financial safety net in the event an employee cannot work due to, among other things, illness. The existing provision rewards employees who avoid taking all their sick leave, by allowing them to accrue the leave, up to a limit, in case of catastrophe. It also further discourages abuse by allowing a "cash-out" of part of the unused leave that exceeds the accrual limit. There is no evidence, from internal or external comparables, or from any circumstances intrinsic to this bargaining unit, that the richer payout escrow provision is warranted. I therefore recommend that the Association's proposal for a revised Article 6 Section 7 be rejected and that section left unaltered.

Vacation Severance Pay Impasse Item

The Association's final offer seeks to correct what it perceives to be a problem of some long-standing. In seeking to

measure a "day" by adding the proposed "8-hour" standard the Association has said that this would do no more than restore specifically that which was originally intended in the language as now appears in the contract. This point has been litigated in three grievance arbitrations, one of which—the first—agreed with the Association, and the last two, which have agreed with the City. The City's final offer is to leave the language "as is."

The Association believes that these last two grievance arbitrators and the Fact Finder in this Impasse have not properly understood the matter and that there is no chance of attaining this sought-for benefit at the bargaining table. The obvious rationale for this final offer here is to secure more money. However, there is nothing on this record to show how much money is likely to be at stake during the next year or in the coming years.

Further, the record here does not show that the City's administration of the benefit as written is clearly wrong, as it has been upheld by the two most recent grievance arbitrators.

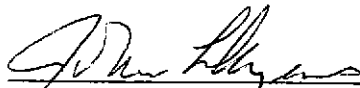
As such, it is more reasonable to leave the matter "as is." As I write this, I realize that I may be simply adding my name to the list of those whom the Association believes do not understand the issue. My job is to decide the case as best I can, disinterestedly. This I have done.

AWARD

Based upon the Findings and Conclusions above, I make the following Award:

1. Wages - The Final Offer of the City is awarded.
2. Holiday Leave - The Contract shall remain "as is" according to the final offer of the Association and the Recommendation of the Fact Finder.
3. Sick Leave Payout - The Contract shall remain "as is" according to the final offer of the City and the Recommendation of the Fact Finder.
4. Vacation Severance Pay - The Contract shall remain "as is" according to the final offer of the City and the Recommendation of the Fact Finder.

Done at Des Moines, Iowa, this 11th day of March, 2004.



John L. Ayers
Impartial Interest Arbitrator

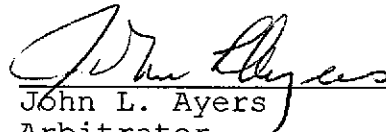
CERTIFICATE OF SERVICE

I certify that on the 11th day of March, 2004, I served the foregoing Award of the Arbitrator upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Jack Reed
427 Crestview
Ottumwa IA 52501

Steve Rasmussen
105 East Third Street
Ottumwa IA 52501

I further certify that on the 11th day of March, 2004, I will submit this Report for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Des Moines, Iowa 50309.


John L. Ayers
Arbitrator

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